UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

PETRO HOLDINGS, INC. and	VED CO. INC.	
PETROLEUM HEAT AND PON Plaintiffs,	VER CO., INC.,	SIVILAGIOS O TATE
	05	PIZZZ MIE
·)	10001
V.)	AMOUNT \$ 30.00
CRUM & FORSTER INDEMNI	TY COMPANY)	SUMMONS ISSUED_NIA
UNITED STATES FIRE INSUR		LOCAL RULE 4.1
THE NORTH RIVER INSURAN	ICE COMPANY)	WAIVER FORM
Defendants	RBS)	MCF ISSUED
MAGISTRATI	JUDGE	DATE GIO

NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

The Defendants, Crum & Forster Indemnity Company, United States Fire Insurance Company and The North River Insurance Company (hereinafter collectively referred to as "Insurers") hereby file this Notice of Removal pursuant to 28 U.S.C. § 1446(a), of the stated cause from the Suffolk Superior Court, Suffolk County, Massachusetts, in which it is now pending, to the United States District Court, District of Massachusetts. In support of this Notice, Insurers state as follows:

- 1. On May 17, 2005, plaintiffs Petro Holdings, Inc. and Petroleum Heat and Power Co., Inc. ("Petro") filed an action against Insurers in the Superior Court of the Commonwealth of Massachusetts, County of Suffolk. That action bears the Docket No. SUCV2005-01945. Copies of the Complaint and Civil Action Cover Sheet are attached hereto as Exhibit A.
- 2. In its Complaint, plaintiffs allege that they are entitled to commercial insurance coverage under policies issued by the Insurers, including but not limited to liability coverage for its fuel delivery vehicles and other vehicles in various states.

- 3. At all times relevant and on May 17, 2005, when the action was commenced in the Superior Court of the Commonwealth of Massachusetts, plaintiff Petro Holdings, Inc. was a Minnesota corporation with a principal place of business at 2187 Atlantic Street, Stamford, Connecticut.
- 4. At all times relevant and on May 17, 2005, when the action was commenced in the Superior Court of the Commonwealth of Massachusetts, plaintiff Petroleum Heat and Power Co., Inc ("PETRO"), was a Minnesota corporation with a place of business at 2187 Atlantic Street, Stamford, Connecticut.
- 5. On May 17, 2005, defendant Crum & Forster Indemnity Company was a Delaware corporation.
- 6. On May 17, 2005, defendant United States Fire Insurance Company was a Delaware corporation with a principal place of business in New Jersey.
- 7. On May 17, 2005, defendant The North River Insurance Company was a New Jersey corporation with a principal place of business in New Jersey.
- 8. Jurisdiction over all civil actions where the matter in controversy exceeds \$75,000, exclusive of interests and costs, and is between citizens of different states. Based on the allegations of the Complaint, many of which the defendants deny, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs. Diversity of citizenship has also been satisfied.
- 9. On or about May 17, 2005, Insurers were first provided with a copy of the Complaint through receipt of a copy of correspondence to the Court by counsel from plaintiff enclosing a copy of the Complaint to be filed. A copy of this correspondence is attached hereto as Exhibit B. Thus, this Notice of Removal is timely filed, being within 30 days of receipt of the Complaint by Insurers, at the filing of the Complaint by plaintiffs.

- A copy of this Notice of Removal will be filed with the Clerk of the Suffolk 10. Superior Court of the Commonwealth of Massachusetts, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).
- 11. Written notice of the filing of this Notice of Removal will be given to all adverse parties as required by law.

WHEREFORE, having met all of the requirements for removal under 28 U.S.C. §§ 1441 and 1446, including the presence of all jurisdictional requirements established by 28 U.S.C. § 1332, defendants give notice that they remove the captioned case to the United States District Court for the District of Massachusetts.

> Respectfully Submitted, The Defendants, Crum & Forster Indemnity Company, United States Fire Insurance Company and The North River Insurance Company, By their attorneys,

Clark W. Yudysky, BBO# 538210 Toomey & Yudysky LLP 99 Summer Street Boston, MA 02110 (617) 946-0930

Of Counsel:

Christopher R. Carroll, Esq. Carroll, McNulty & Kull LLC 120 Mountain View Boulevard P.O. Box 650 Basking Ridge, NJ 07920

Dated: 6/10/05

CERTIFICATE OF SERVICE

I, Clark W. Yudysky, counsel for the removing parties, Defendants, Crum & Forster Indemnity Company, United States Fire Insurance Company and The North River Insurance Company, do hereby certify that I served a copy of the foregoing **NOTICE OF** REMOVAL TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, on all parties to this action by mailing a copy of same, postage prepaid, to them or their counsel of record:

> Francis M. Lynch, Esquire Matthew P. Zayotti, Esquire KEEGAN WERLIN LLP 265 Franklin Street Boston, MA 02110

Date: $\frac{c^{2}/10/05}{2}$

bmd 61993.1 6/8/05

EXHIBIT "A"

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

TRIAL COURT OF THE COMMONWEALTH SUPERIOR COURT DEPARTMENT Civil Action No.

PETRO HOLDINGS, INC. and
PETROLEUM HEAT AND
POWER CO., INC.,

Plaintiffs,

V.

CRUM & FORSTER INDEMNITY
COMPANY, UNITED STATES
FIRE INSURANCE COMPANY,
and THE NORTH RIVER
INSURANCE COMPANY,
Defendants.

COMPLAINT

This is an action against the Defendants Crum & Forster Indemnity Company, United States Fire Insurance Company, and North River Insurance Company for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair and deceptive insurance claims settlement practices in violation of M.G.L. c. 93A and M.G.L. c. 176D arising from the Defendants' failure and refusal to provide defense and indemnity for claims covered by a commercial auto insurance policy issued by the Defendants to the Plaintiffs.

PARTIES

- 1. The Plaintiff, Petro Holdings, Inc. ("Petro Holdings"), is a Minnesota corporation with a principal place of business at 2187 Atlantic Street in Stamford, Connecticut. Petro Holdings is the named insured party under several commercial insurance policies issued by the Defendants.
- 2. The Plaintiff, Petroleum Heat and Power Co., Inc. ("PETRO"), is a Minnesota corporation with a usual place of business at 2187 Atlantic Street in Stamford, Connecticut. PETRO operates several affiliated companies, including Atlas Oil Company ("Atlas") with a usual place of business at 295 Eastern Avenue in Chelsea, Massachusetts, that are covered under the relevant commercial insurance policies issued by the Defendants.
- 3. Upon information and belief, the Defendant, Crum & Forster Indemnity Company ("Crum & Forster"), is a California corporation with a principal place of business at 305 Madison Avenue, Morristown, New Jersey 07960. Crum & Forster regularly conducts business in Massachusetts and maintains a usual place of business at 60 State Street, 5th Floor, Boston, Suffolk County, Massachusetts 02109.
- 4. Upon information and belief, the Defendant United States Fire Insurance Company ("USFIC"), is a New Jersey corporation with a principal place of business at 305 Madison Avenue, P.O. Box 1973, Morristown, New Jersey 07962. USFIC regularly conducts business in Massachusetts and maintains a usual place of business at 60 State Street, 5th Floor, Boston, Suffolk County, Massachusetts 02109.
- 5. Upon information and belief, the Defendant North River Insurance Company ("NRIC"), is a New Jersey corporation with a principal place of business at

305 Madison Avenue, P.O. Box 1973, Morristown, New Jersey 07962. NRIC regularly conducts business in Massachusetts and maintains a usual place of business at 60 State Street, 5th Floor, Boston, Suffolk County, Massachusetts 02109.

JURISDICTION AND VENUE

- This Court has original jurisdiction over this matter pursuant to M.G.L.
 212, § 4.
- 7. This Court has personal jurisdiction over the Defendants Crum & Forster, USFIC and NRIC pursuant to M.G.L. c. 223A, § 3, because each of the Defendants has:

 (a) transacted business within this Commonwealth, (b) contracted to supply services or things in this Commonwealth; (c) caused tortious injury by an act or omission in this Commonwealth; (d) caused tortious injury in this Commonwealth by an act or omission outside this Commonwealth, and regularly does or solicits business, or engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth; and/or (e) contracted to insure persons, property and risks located within this Commonwealth at the time of contracting.
- 8. Venue is proper pursuant to M.G.L. c. 223, § 8 because each of the Defendants has a usual place of business in Boston, Suffolk County, Massachusetts.

FACTS

9. Defendants Crum & Forster, USFIC and NRIC have provided insurance to Petro Holdings and PETRO and its affiliated, associated, allied or subsidiary companies (collectively hereinafter referred to as "PETRO") under several commercial insurance policies.

- 10. Among other businesses, PETRO is involved in the retail sale of heating fuel oil and, in connection therewith, PETRO owns and operates trucks and vehicles in several states for the transportation and delivery of such oil to commercial and residential customers.
- 11. From in or about the early 1990s until January 31, 2004, PETRO obtained commercial insurance coverage under policies issued by the Defendants, Crum & Forster, USFIC and NRIC, including but not limited to liability coverage for its oil delivery vehicles and other vehicles in various states under the "Business Auto Coverage Form" identified by Insurance Services Offices, Inc. ("ISO") as form CA-00-01-07-97 (hereinafter the "Auto Policy").
- 12. As part of the Auto Policy, PETRO obtained broadened coverage from the Defendants under several endorsements to the Auto Policy, including the endorsements entitled "Pollution Liability Broadened Coverage for Covered Autos," identified by ISO as forms CA-99-48-12-93 and MM-99-55-09-98.
- 13. Under the terms and conditions of the Auto Policy, the Plaintiffs are entitled to coverage in the amount of \$1,000,000 for any single loss, subject to no or a nominal deductible. In exchange for such coverage, PETRO paid a total policy premium of \$2,383,924.11 for the period from February 1, 2001 until February 1, 2002.
- 14. On or about May, 2001, a meeting was held between representatives of PETRO and representatives of Crum & Forster to discuss insurance coverage for occurrences involving the discharge or release of oil. It was decided and agreed upon by PETRO and Crum & Forster that the Auto Policy would cover releases of oil which

occurred as a result of the loading or unloading of oil, or to the delivery of oil to a customer by a PETRO truck driver.

- Defendants a claim for which the Plaintiffs sought defense and indemnity under the Auto Policy, involving the release of oil after a delivery was made to the storage tank at a single-family residential property at 79 Concord Street in Ashland, Massachusetts and owned by Mark and Dorothy Heaton (the "Heatons"). The Heatons alleged that the delivery on September 11, 2001 caused their oil tank to rupture and release oil, causing damage to their real and personal property (the "Heaton Claim").
- 16. The Heaton Claim included assertions that as a result of the release of oil, the Heatons were owed the amount of \$3,594,170.00, including \$1,166,050.00 in actual damages, plus the amount of \$2,428,120.00 in multiple damages, attorney's fees and costs for alleged unfair and deceptive practices.
- 17. The Defendants were placed on notice by PETRO immediately after the release at the Heaton property, and the Defendants, without explanation, declined to defend and/or indemnify PETRO against the Heatons' claims.
- 18. The Heaton Claim also included a demand that PETRO pay for the costs to remediate the impacts of the oil release on soil and groundwater. In order to mitigate potential damages, but without admitting liability, PETRO paid approximately \$350,000 for environmental contractors to conduct remedial actions at the Heatons' property.
- 19. The Heaton Claim fell within the scope of coverage under the Auto Policy, as confirmed at the meeting between PETRO and Crum & Forster on May 17,

2001, when Crum & Forster expressly acknowledged and agreed that losses such as those involved in the Heaton Claim fell within the scope of coverage under the Auto Policy.

- 20. Prior to and after the meeting between PETRO and Crum & Forster on May 17, 2001, PETRO had submitted to the Defendants numerous claims similar to the Heaton Claim, and in every instance the Defendants provided defense and indemnity for such claims under the Auto Policy, consistent with the agreement at the meeting between PETRO and Crum & Forster on May 17, 2001, when Crum & Forster expressly acknowledged and agreed that such losses fell within the scope of coverage under the Auto Policy. The following claims against PETRO, similar to the Heaton Claim, were among those covered by Crum & Forster under the Auto Policy:
 - a. <u>NMU80072395</u> Approximately 100 gallons released into basement during delivery. Release occurred from leaking oil line and oil tank. Date of loss: March 16, 1999;
 - b. <u>NMU80072481</u> Approximately 40 gallons of oil released in basement during PETRO delivery. Oil lines installed by others left open with no valves and not hooked up to boiler. Date of loss: March 26, 1999;
 - NJU83668 Oil released out of hole in bottom of the oil tank.
 Date of loss: October 22, 1999.
 - d. <u>NMU80075937</u> PETRO Oil made delivery, apparently overfilled tank. Customer called after order to report oil odor. Date of loss:
 December 31, 1999;

- e. <u>PTU80064022</u> Oil released from abandoned oil line. Claimant alleges improper system installation. Date of loss: March 23, 2000;
- f. <u>BSU80073001</u> Oil tank installed by another company, and did not connect line to burner. Approximately 50-75 gallons released into basement. Date of loss: May 18, 2000;
- g. <u>PTU80067885</u> PETRO made delivery to tank and homeowner called later to report leak of approximately 70 gallons from tank, apparently from holes in the bottom of tank. Date of loss: August 10, 2000;
- h. <u>NJU80076970</u> Approximately 250 gallons of oil released from corroded abandoned tank in basement. Oil fill and vent alarm pipes still present. Date of loss: December 23, 2000;
- i. <u>NJU80077031</u> Release of oil between deliveries due to splits in oil line. Date of loss: December 31, 2000;
- j. <u>BSU80076958</u> PETRO overfilled tank, which ruptured and released into the basement. Date of loss: April 10, 2001;
- k. <u>NJU80083616</u> PETRO made residential oil delivery, and two days later an oil release was discovered. Date of loss: May 2, 2001;
- NJU80079614 Delivery made at 10:00 AM. Customer contacted PETRO at 2:00 PM to report oil had leaked from hole in the oil tank. Date of loss: June 1, 2001;

- m. NJU80081014 Oil released into basement during delivery because of failure of corroded tank. Date of loss: September 14, 2001;
- n. <u>BSU80079073</u> Oil tank filled during the day. Customer called that evening complaining of an oil smell. Upon inspection, tank was ruptured on the bottom, allegedly because of delivery. Date of loss: September 29, 2001;
- NJU80081072 Mis-delivery to home that had converted to gas,
 but had left fuel oil fill pipe there. Date of loss: October 3, 2001;
- p. <u>PTU80077794</u> Oil tank failed during delivery because of corrosion. Date of loss: November 3, 2001;
- q. NJU80082500 Release of oil into basement from leaking tank during first delivery to customer. Date of loss: November 24, 2001;
- r. <u>PTU80079118</u> Delivery went to wrong address. Oil tank had been removed, but oil fill pipe and vent alarm still in place. Approximately 137 gallons released. Date of loss: January 10, 2002;
- s. <u>BSU80080280</u> Mis-delivery to a non-PETRO customer. Oil released onto basement floor. Date of loss: February 2, 2002;
- t. NJU80086010 Tank overfilled by driver. Release discovered two days later. Date of loss: October 10, 2002;

- u. <u>PTU80083517</u> Mistaken delivery to property which had converted to gas. Oil tank, with vent and fill pipe, still present, but oil line to burner was cut. Approximately 61 gallons released into basement. Date of loss: October 14, 2002;
- PTU80080587 Mistaken delivery to property converting to gas.
 Property owner had failed to remove oil fill pipe, which was used by PETRO deliveryman;
- W. <u>PTU80083863</u> Morning oil delivery. Customer called at 3:00
 PM to report leak from the side of the tank. Tank failed due to corrosion. Date of loss: October 30, 2002;
- Although the Defendants' obligation to provide defense and indemnity under the terms and conditions of the Auto Policy was clear, and despite the Defendants' practice of providing coverage under the Auto Policy for claims such as the Heaton Claim, and despite the Defendants' express acknowledgement and agreement on May 17, 2001 that such claims were covered under the Auto Policy, the Defendants refused to provide coverage for the Heaton Claim under the Auto Policy.
- 22. While denying coverage under the Auto Policy, the Defendants asserted in bad faith that coverage for the Heaton Claim was available only under a commercial general liability ("CGL") insurance policy, which limited coverage for each occurrence to \$500,000 and included a self-insured retention for PETRO in the amount of \$500,000.
- 23. On or about May 30, 2002, PETRO's expert on oil tank failures, Thomas W. Eager, Ph.D. of the Massachusetts Institute of Technology, opined that the Heaton tank failed during or soon after the delivery "because the oil in the tank exerted pressure

from inside the tank and pushed through an area of metal affected by corrosion, rather than a puncture of weld failure."

- 24. In November, 2002, PETRO again requested defense and indemnity for the Heatons' Claim. Again, the Defendants, without explanation, declined to defend and/or indemnify PETRO.
- 25. On November 11, 2002, Donna Matt of Crum & Forster sent an electronic message to PETRO stating that "the trigger is based upon proximate cause. Auto [coverage] is triggered on spills based on loading and unloading when the PETRO driver is making a delivery."
- 26. On November 12, 2002, Eric Tibah from Crum & Forster sent the following electronic message to PETRO:

At the May, 2001 meeting (Donna Matt wasn't in attendance), it was decided that on all new losses, the time damage was discovered was no longer a determining factor. We would decide which policy applies based on the proximate cause of the loss itself. If the damages arose out of a delivery of oil, it is typically an auto claim. If the damages resulted from the improper installation or maintenance of an oil tank, oil line or boiler/furnace, it was a GL claim.

- 27. On December 9, 2002, the Defendants responded to PETRO with a certified letter, denying coverage for the Heaton Claim, but also stating that the Defendants "are undertaking the investigation and handling of this claim in accordance with the terms and condition of the [Auto Policy]."
- 28. The Defendants' electronic claim notes regarding the Heaton incident states: "OIL TANK LEAKED AFTER DELIVERY BY INSUREDS TRUCK"
- 29. On or about November 2004, the Heaton Claim was settled upon payment of \$460,000, including approximately \$150,000 from PETRO (as the balance of

PETRO's self-insured retention that remained after PETRO paid for environmental response actions) and approximately \$310,000 from Defendants under the CGL policy.

COUNT I (Declaratory Judgment)

- 30. The Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 29 of this complaint.
- 31. The Defendants have improperly failed and refused to provide defense and indemnity for the Heaton Claim under the Auto Policy.
- 32. As a result of the foregoing facts, there is an actual controversy between the Plaintiffs on the one hand, and the Defendants on the other hand, regarding the respective rights and obligations of the parties under the Auto Policy.
- 33. Pursuant to M.G.L. ch. 231A, §§ 1 and 2, Plaintiffs seek a declaratory judgment declaring that the Defendants have breached their obligations to defend and indemnify and establishing Plaintiffs' right to coverage under the Auto Policy.

COUNT II (Breach of Contract)

- 34. The Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 29 of this complaint.
- 35. The Plaintiffs are entitled to defense and indemnity for the Heaton Claim under the terms and conditions of the Auto Policy.
- 36. The Defendants have breached their contract with the Plaintiffs by failing and refusing to provide defense and indemnity for the Heaton Claim under the Auto Policy.

- 37. The Defendants have breached the implied covenant of good faith and fair dealing by failing and refusing to provide defense and indemnity under the Auto Policy, and by seeking to force the Plaintiffs to accept substantially diminished coverage for the Heaton Claim under a general commercial liability insurance policy.
- 38. As a result of the Defendants' breach of contract and breach of the implied covenant of good faith and fair dealing, the Plaintiffs have suffered damages.

COUNT III (Unfair and Deceptive Trade/Settlement Practices)

- 39. The Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 29 of this complaint.
- 40. At all times relevant hereto, the Plaintiffs and Defendants were are engaged in trade or commerce within the meaning of M.G.L. c. 93A, § 11.
- 41. At all times relevant hereto, the Defendants were persons engaged in the business of insurance within the meaning of M.G.L. c. 176D, § 1(a).
- 42. As persons engaged in the business of insurance, the Defendants had a statutory duty under M.G.L. c. 176D, § 3(9) to effectuate prompt and fair settlement where, as in this case, liability has become reasonably clear.
- 43. The Defendants' failure to provide defense and indemnity and effectuate prompt and fair settlement under the Auto Policy constitutes an unfair settlement practice in violation of M.G.L. c. 176D, § 3(9).
- 44. The acts of the Defendants as aforesaid constitute unfair and deceptive acts and practices within the meaning of, and proscribed by, M.G.L. c. 93A, §§ 2 and 11.

- 45. The Defendants' use and employment of unfair or deceptive acts or practices was willful and knowing.
- 46. As a result of the Defendants' unfair settlement practices in violation of M.G.L. c. 176D, § 3(9), and the Defendants' willful and knowing violations of M.G.L. c. 93A, §§ 2 and 11, the Plaintiffs have suffered actual damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- Adjudge and declare that Plaintiffs are entitled to defense and indemnity under the Auto Policy;
- 2. Enter judgment against the Defendants for the damages incurred by Plaintiffs as a result of the Defendants' breach of contract and breach of the implied covenant of good faith and fair dealing;
- 3. Enter judgment against Defendants for violation of M.G.L. c. 93A for the actual damages that the Plaintiffs have suffered, plus double or treble damages, together with interest, attorney's fees and costs; and
- 4 Order such other and further relief that this Court may deem proper, equitable and just.

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

PLAINTIFFS PETRO HOLDINGS, INC., and PETROLEUM HEAT AND POWER CO., INC.

By their attorneys,

Francis M. Lynch, BBO #308750 Matthew P. Zayotti, BBO #638265 Keegan Werlin LLP

265 Franklin Street Boston, MA 02110 (617) 951-1400

Dated: May 13, 2005

,		The Commons	of Massachusetts	·	Docket Number	······································
	L ACTION COVER SHEET	SUPERIOR COI County:	URT DEPARTMENT			
LA	NTIFF(S) Petro Holding Petroleum Hea Inc.	s, Inc. and t and Power Co.,	DEFENDANT(S) Cru The North River	m & For • FAXXXI Insurance	ster Inde Fire Insur Co.	mnity C ance Co.
ra (ee)21 loa	ORNEY, FIRM NAME, ADDRE ncis M. Lynch and Matth gan Werlin LLP 265 Fra 10, 617-951-1400 d of Bar Overseers number 30	SS AND TELEPHONE ew P. Zayotti nklin St., Boston,MA 8750 and 638265	ATTORNEY (if know	1) '		
		Origin code and	track designation			
x]	e an x in one box only: 1. F01 Original Complaint 2. F02 Removal to Sup.Ct. c. (Before trial) 3. F03 Retransfer to Sup.Ct.	231, s.104 (F) [] 5.	F04 District Court Appe F05 Reactivated after r Order (Mass R. Civ.P E10 Summary Process	escript;relie . 60)	97 &104 (After I from judgment	(X) (X) (X) (X)
:00	TYPE ENO. TYPE OF ACT	OF ACTION AND TRACK I	DESIGNATION (See re	rerse side) JURY CAS	E?	
013	Declarationy Jud	gment (A)	(X) Yes	()	lo	
nor	following is a full, itemize ney damages. For this for	m, disregard double or <u>TORT</u> (Attach additional s	treble damage clain	ns; Indica	le single dam	ages only
٠.	Documented medical expensions. Total hospital expensions. Total Doctor expensions. Total chiropractic expensions.	ses				\$ \$
	 Total physical thera; 	penses by expensess (describe)		. <i></i>		\$ \$
}. }.	Documented lost wages Documented property do		late			\$ \$
). :	Reasonably anticipated Reasonably anticipated Other documented items	future medical and hos lost wages	pital expenses			\$ \$
· 3.	Brief description of plain		•	njury (des	cribe)	\$
					TOTAL:	\$

TOTAL :

customer.

\$500,000

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." Signature of Attorney of Record . . . DATE: 5/13/05

CIVIL ACTION COVER SHEET INSTRUCTIONS ECT CATEGORY THAT BEST DESCRIBES YOUR CASE

. •	CONTRACT	·.;		ATT TO BE STORE OF THE STORE OF	• •	archame a sematea	
A01 .				REAL PROPERTY		MISOELLANEOUS	
	Services, labor and materials	(F)	C01	Land Taking (eminent domain)	(F) E0	Z Appeal from Administrative.	(X)
A02	Goods sold and delivered	(F)		Zoning Appeal, G.L.c.40A	(F) E0	Action against Commonwealth ////////////////////////////////////	(A)
A03	Commercial Paper	· (F)	C03	* Dispute concerning title	(F) E0	5 All Arbitration	. (X)
A08	Sale or lease of real estate	(F)	. C04	Forectosure of Mortgage		7. G.L. c.112.s.125 (Mary Moe)	χï
A12	Construction Dispute	ίΑί	C05	Condominium lien &charges		8 Appointment of Receiver	:X
A99	Other (Specify)	(5)	C99				. !^
		, (1)	033	Other (Specify)	•	9 General Contractor bond, GL 0149,s.29,29a	(A)
	TQRT			EQUITABLE REMEDIES	E1	Workers' Compensation	OG.
· 803	Motor Vehicle Negligence-	(F)	D01	Specific performance of contract.		2 G.L.c.123A.s.12 (SDP Commitment)	(X)
	Personal injury/Property Damage	i. •	. D02	Reach and Apply	(F) E1	G.L. c. 123A, s. 9 (SDP Petition)	(0)
*B04	Other negligence-	(F)	.D06		(F) Es	Abuse Petition, G L c.209A	
				Indemnification	(1. Y. m.)	Applied Control of Creat	(X)
	personal injury/property damage		007	Imposition of Trust	(A) E1	Auto Surcharge Appeal	(00)
B 05	Products Liability	. (A)	DÓ8	Minority Stockholder's Suit	(A) E1	Civil Rights Act, G.L. c. 12:s.11H	(Å)
B06	Malpractice-Medical	(A)	D10		(A) ·· E4	Foreign Discovery Proceeding	
B07	Malpractice-Other (Specify)	(X)	D12		(F) E1	Sex Offender Registry G.L.c.	. (X) :-
•		, 44		Dissolution Faculeistap.	ft. i eu	178M.s.6	(X)
B08	Wrongful death, G.L.c.229, R.Z.A.	(4)	D13	Declaratory Vydoment G.L.c.	(A) E2	5 Pleural Registry (Asbestos cases)	
B15	Defamation (Libel-Stander)	(À)	D99	Office (Specify)	(F) E9	Forfeiture G.L.c. 94C, s.47	763
B19 ·	Asbestos	· (A)				Prisoner Cases	. (2)
B20	Personal Injury-Stip&Fall	(F)				Prisoner Habeas Corpus	(X)
B21 .	Environmental	· . · (F) .				Other (Specify)	
B22	Employment Discrimination	(*) .			, (E)	one fabriill	(X)
239	Other (Specify)	(4)	•	**			
	- Alterday tobeauth	. (17)	_				• •

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO. TYPE OF ACTION (SPECIFY) IS THIS A JURY C Motor Vehicle Negligence-Personal Injury [x] Yes [] No

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/ter counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money-damages. A copy of such dividential ection cover sheet; including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filled, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate; he or his counsel may file with the answer a statement, or shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT, BUFF FOR

FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY MAY RESULT IN DISMISSAL OF THIS ACTION.

Case 1:05-cv-11222-MEL Document 1 Filed 06/10/2005 Page 22 of 23

EXHIBIT "B"

KEEGAN WERLIN, LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS; (617) 951-1354

(617) 951-0586

May 13, 2005

Civil Clerk's Office Suffolk Superior Court 3 Pemberton Square, 12th Floor Boston, Massachusetts 02108

Re: Petro Holdings, Inc. et al. v. Crum & Forster Indemnity Company, et al.

Dear Sir or Madam:

In connection with the above-referenced matter, enclosed please find the following:

- 1. Civil Action Cover Sheet;
- 2. Complaint; and
- 3. Check in the amount of \$570, representing the fee for filing a new action with two (2) plaintiffs, plus the fee for four (4) summonses.

Kindly acknowledge your receipt hereof by date-stamping the enclosed copy of this letter; stamping the docket number and date on the enclosed copies of the Civil Action Cover Sheet and Complaint; and by returning the aforesaid copies to me, along with four (4) summonses, in the enclosed, self-addressed, postage prepaid, envelope.

Thank you for your assistance with this matter.

Very truly yours,

Matthew P. Zayotti

Enclosures

cc: Barry P. Fogel, Esq.
Francis M. Lynch, Esq.
Steven G. Everson, Esq.